

19 May 2015

Julia Snape
Information Requests

David John
request-266076-af6d5b4d@whatdotheyknow.com

information.requests@ofcom.org.uk

Dear Mr John

Freedom of Information: Right to know request

Thank you for your request for information regarding the name or frequency of the illegal broadcast station where operations are being conducted in the Norfolk area. You also asked for the reason Ofcom took action. Your request was received on 8 May as a follow up to a response to your request of 29 April and has been considered under the Freedom of Information Act 2000 ('the Act').

As explained in our response to your request dated 29 April we are unable to release the station name or frequency as this is exempt from disclosure under Section 44 of the Act. I quote from our letter dated 8 May:

'Section 44 of the Act prevents organisations releasing information if another Act has said that it shouldn't, such as the Communications Act 2003, or the Wireless Telegraphy Act 2006.

For further information on Section 44 of the Act, please see:

<http://www.legislation.gov.uk/ukpga/2000/36/section/44>.

This information is being withheld under Section 44 of the Act, in line with Section 38 (2) (c) (i) of the Wireless Telegraphy Act 2006. That is because releasing details about the stations, such as names or frequencies, could be seen to be facilitating their day-to-day operations.'

With regard to the second part of your request you asked for:

'the reason for the actions Ofcom took, for example listener complaint or mobile phone mast operator/city council (in the case of a tower block)'

We are unable to disclose any details of investigation or enforcement action as this is exempt from disclosure under Section 31 of the Act. As also outlined in our response to your request dated 29 April, *'The release of this information to the general public may prejudice Ofcom's ability to perform its ongoing regulatory functions, with the following purposes:*

(a) the purpose of ascertaining whether any person has failed to comply with the law,

(b) the purpose of ascertaining whether any person is responsible for any conduct which is improper,

(c) the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,

For information on Section 31 of the Act, please see:

<http://www.legislation.gov.uk/ukpga/2000/36/section/31>

In applying this exemption we have had to balance the public interest in withholding the information against the public interest in disclosing the information. In the annex I have set out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.'

You may find it helpful to know what we generally take into account when determining appropriate enforcement sanctions.

The Crown Prosecution Service Code for Crown Prosecutors is a document that we adhere to in general terms

(http://www.cps.gov.uk/publications/docs/code_2013_accessible_english.pdf).

Please ensure that when using the provided information in any way, you comply with all relevant legislation. For example, the information provided may be protected by copyright under the Copyright, Designs and Patents Act 1988 (as amended). If in doubt, please seek independent legal advice. For Ofcom's policy on copyright and related issues, please refer to <http://www.ofcom.org.uk/disclaimer>.

Yours sincerely

Julia Snape

If you are unhappy with the response or level of service you have received in relation to your request from Ofcom, you may ask for an internal review. If you ask us for an internal review of our decision, it will be treated as a formal complaint and will be subject to an independent review within Ofcom. We will acknowledge the complaint and inform you of the date by which you might expect to be told the outcome.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

Timing

If you wish to exercise your right to an internal review **you should contact us within two months of the date of this letter**.

There is no statutory deadline for undertaking internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exception cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact:

Graham Howell
The Secretary to the Corporation
Ofcom
Riverside House
2a Southwark Bridge Road
London SE1 9HA

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
Cheshire

Annex

Section 31 (1): Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice -

- (a) the prevention or detection of crime;
- (b) the apprehension or prosecution of offenders.

Factors for disclosure	Factors for withholding
<ul style="list-style-type: none"> • Open policy making and public confidence in regulated activities 	<ul style="list-style-type: none"> • Disclosure of Ofcom's enforcement operational policies would prejudice the effective conduct of Ofcom's enforcement activities because offenders could use such detailed knowledge to obstruct enforcement action or procedures.

Reasons why public interest favours withholding information	
<ul style="list-style-type: none">• Disclosure of detailed enforcement policy, which is often in a state of review, could be used by offenders to counter our enforcement activities and would inhibit and prejudice our enforcement ability. It is in the public interest for this not to happen because ineffective enforcement action would lead to a rise in the use of illegal radio equipment which would lead in turn to increased interference to radio users.	